



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,990	01/09/2002	Geza Bruckner	22740-1A	7684

24256 7590 08/29/2003

DINSMORE & SHOHL, LLP
1900 CHEMED CENTER
255 EAST FIFTH STREET
CINCINNATI, OH 45202

EXAMINER

WEBMAN, EDWARD J

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 08/29/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	101042990	BRUCKNER
Examiner	WEBMAN	Group Art Unit 1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 5/22/03.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 48 - 74 is/are pending in the application.

Of the above claim(s) 50-52, 56, 61, 66-68, 70, 72 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 48, 49, 53-55, 57-60, 62-65, 69, 71, 73-74 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 48, 49, 53-55, 57-60, 62-65, 69, 71, 73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (WO 98/04248) in view of Fort (translated DE 29805782u1).

Jackson et al. Teach a dietary supplement composition for postmenopausal women containing 1-50 mg phytoestrogen (abstract; page 7, line 27; and page 27, line 30). Genistein is specified (page 26, line 5). The composition may be formulated with cereal (page 27, line 11). Phytoestrogen obtaining from soybean is disclosed (page 27, line 30; and claim 47).

However, Jackson et al. do not teach carnitine.

Fort teaches a dietary cereal containing carnitine (title, abstract, page 5 line 15). Support of heart muscle activity and increasing stability against physical stress (page 4 lines 10-13).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to add carnitine to the composition of Jackson et al. to achieve the beneficial effect of supplementing the dietary needs for post-menopausal women by supporting heart muscle activity and increasing stability against physical stress in view of Fort.

As to the claimed weight percent, it is within the skill in the art to select optimal parameters such as ratios or weight percents of components in order to achieve a beneficial effect. See In re Boesch, 205 USPQ 215 (CCPA 1980). Therefore, the ratios or weight percents instantly claimed are not considered critical absent evidence showing unexpected and superior results.

As to the claimed instructions, such is merely printed matter not considered a patentable limitation in claims to a composition. See MPEP 70603 (a) under "Printed Matter".

Applicants argue that neither reference teaches applicants' treatment, however, intended uses are not considered patentable limitations in composition claims during prosecution before the USPTO.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 308-4432. The examiner can normally be reached on Monday-Friday 9am-5pm.

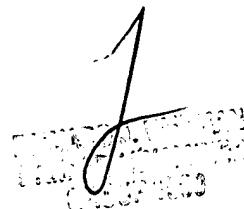
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on 305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 305-3592 for regular communications and 305-1235 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234.

Application/Control Number: 10/042,990
Art Unit: 1617

Page 4

Webman/tgd
August 12, 2003

A handwritten signature consisting of a stylized 'T' or 'J' shape followed by a cursive 'G' and 'D'. The signature is written in black ink on a white background.